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GR
26-4-47

1947.

**File No.** O. Civ. P. C. 47

K

Legal **DEPARTMENT**

H **BRANCH**

**Subject:—**

Opinions under the

code of civil procedure 1908.

P 19
C

**File No.** O. Civ. P.C./47

Std. Sectt. Slip 24 B c.

183-A.

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V.VK. 15/5/56/

5C.

REGISTERED.

No.318/4/A
HQ Bombay Area
Colaba Bombay 5
21th Nov. 1946.

The Legal Remembrancer,
Bombay.

Sub:- DISCIPLINE : MONEY LENDERS CLAIM FROM GOVT.EMPLOYEES.

The OC Ind Sta Wksps, IEME DEOLALI has been summoned to appear before Civil Judge C.D. NASIK on 27 Nov 46 for the purpose of showing cause against the statements made against him by F.B.MUSA.

2. Relevant documents A. -B. -C. -D.-E and F are attached.

3. The circumstances of the case are :-

i) Pro-note No. 53 of 1946 was only in force upto 5 Jun 46. See:B'
ii) Letter No. 50601 dt 15Aug 46(letter E ) from OC Ind Sta W/shops to the Plaintiff clearly states the fact mentioned at (i) above, and that the bonus was not make available for payment until 13 Aug 46, 2 months after expiry of the pro-note.

4. It would appear that this is the beginning of a series of Court cases in which the Plaintiff who is presumably a money lender is attaching the bonus money of civilian Govt.Employees. In view of the necessity to safe guard the interests of individuals will you please forward your advice on this and similar cases and arrange for the hearing fixed for 27 Nov 46 be postponed until further notice.

Sd/-
dt/-
MAJOR-GENERAL
COMD BOMBAY AREA.

(Capt. P.N. while Sec. 39621)

V.VK.
15/5/56/ SC.

Submitted.

The Commander, Bombay Area, has forwarded copies of documents at pp.3-11 ante for advice and necessary action. The facts as emerging from the documents are these: One Mr. P.B.MUSA filed Civil Suit No. 53 of 1946 in theCourt of the Civil Judge, Junior Division, Nasik , against one Bhaskar Daniel Kamble, a fitter in the I.E.M.E. Station Workshop, Camp Deolali, for recovery of a sum of Rs.51/8/6. The Court decreed the suit in favour of the plaintiff and a prohibitory order was served on the Officer commanding, Indian Station Workshop, Deolali, prohibiting him from paying the said sum of Rs.51/8/6 to Kamble due on account of his salary. In the meanwhile the department left the service and the Officer Comm. informed the Court accordingly adding that a sum of Rs. 212/8/- was however due to Kamble's credit on account of bonus for service rendered. On 1-4-1946 the Court accordingly modified the prohibitory order and asked the Officer Comm. to withhold payment of a sum of Rs. 57/2/6 )Rs. 51/8/6 + Rs.3/10 expenses) out of the amount of bonus pending further orders. (see notice at p.5 ante which is endorsed as being in force upto [illegible]/1946). To this notice the O.C. sent a reply that the bonus was a gift given for loyal service and was not pay enquiring whether it could be attached . However the Court by its letter dated 13/4/1946(p.7 ante) confirmed its previous order and asked the Officer to forward the amount to it. On15-8-1946 the Officer Commanding informed the Judgment Creditor that the settlement of the amount of bonus was made in July 1946 after the expiry of thelife of the prohibitory order and consequently the payment was not withheld and the apount was paid to the defendant. on 13/8/1946. As result, the plaintiff filed an application in the Court of the Civil Judge complaining that the amount of Rs.57/2/6 was paid to Kamble by the Officer Commanding in breach of the prohibitory order served on him by the Court

and praying that legal action be taken against the said Officer and the defendant Kamble. The Officer Commanding was accordingly ~~xxxxxx~~ served with a notice to show cause on 30/10/1946.The papers were however received in office on that date and consequently no instructions to the D.C.P. Nasik would be given in time.

2. From the facts above stated it appears that the Officer Commanding may be held to have committed contempt of Court since the amount of Rs.57/2/6/ was paid to Kamble in spite of the prohibitory order issued by the Civil Judge, Junior Division, Nasik .However that officer appears to have misunderstood the notice which mentioned that it remained in force till 5/6/1946/ and the Commander, Bombay Area, has raised the question whether the bonus which was payable as a reward for past services could at all be attached. He states that ~~xxxxx

No.8697

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 3rd December 1946.

Subject :- C.S.No.53 of 1946 in the Court of the Civil Judge Junior Division ,Nasik.
F.B.Musa of Bombay. ..... .Plaintiff
vs.
Bhaskar Dantel Kamble, Camp Deolali.)
Fitter Iems Stn. W/S. )
Lawrence Road, Deolali ) Defendant.

With reference to the subject noted above copies of documents marked A,B,C,D,E, and F are herewith forwarded to the District Government Pleader, Nasik with a request to communicate at an early date the next date fixed for showing cause against the statements made by the applicant F.B.Musa and if the next date is very near to appeare on behalf of the Manager, I.E.M.E. Workshop, Camp Deolali , and to obtain a further adjournment.

O.C. Sd/-R.M.Mehata
For Remembrancer of Legal Affairs.

To

The District Government Pleader, Nasik.

Issued
Sd/-S.T.K.
dt/-3/12/

Copy forwarded with compliments to the Commandar, Bombay Area, with reference to his No. 318/4/A dated 21/11/46.

V.VK. 15/5/1956/

SC.

No. 145
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 6th January 1947.

Subject:- C.S. No. 53 of 1946 in the Court of the Civil Judge, Junior Division, Nasik.
F.B. Musa of Bombay ---------Plaintiff
vs.
Bhasker Naniel Hamble,)
Camp Deolali )
Fitter IEME Stn. W/S. )
Lawrence Road, Deolali.) --Defendant

MEMORANDUM,

The attention of the District Government Pleader, Nasik is invited to this office memo. No. 8697, dated 3rd December 1946, on the above subject and he is requested to expedite reply thereto at a very early date.

O.C.

Id/-P.M.L.
For Remembrancer of Legal Affairs.

To
The District Government Pleader,
Nasik.

Submitted for signture

Id/-
dt/-6/1/47/

SAS.

Issued
Id/-S.K.V.
dt/-6/1/1947/

V.VK. 15/5/56/

50.

No. 6897 of 1946
Office of the District Govt.
Pleader, Nasik 21 st Dec. 46
1946.

From

C.K. Gadgil, Esqr, B.A.LL.B.,
District Government Pleader, Nasik.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- C.S. No. 53 of 1946 in the Court of the Civil Judge, S Jr.Dn.Nasik (F.D.Musa Vs. Bhaskar Daniel Kamble, Deolali).

Sir

With reference to your letter No. 8697 dated 3rd December 1946 on the subject noted above I have the honour to state that the proceedings named above was fixed for-hearing on 18-12-1946 for hearing. As the applicant named above remained absent on that date the Court passed the---- following order:

"Darkhastdar absent. Hence Exh. 8 has to be rejected for want of prosecution.Darkhast disposed of. Cost on Judgment-debtor. "

Your obdient servant

Sd/- C.K.Gadgil,
Dist: Govt.,Pleader, Nasik.

Copy forwarded with compliments to the HQ Bombay Area,Colaba Bombay for information as per his No. 318/4/A dated 17-12-46 .

11746
23/12/46/

Submitted with pp

Sd/-E.P.B.
dt/-10/1/

S.S.

Please see the letter of the Commander,Bombay Area,dated 21-11-1946 at p.1 ante.

F.D. Musa obtained a decree in the Court of the Civil Judge (Junior Division), Nasik against Bhasker Daniel Kamble, who was serving as a fitter in the I.E.M.E. workshop at Deolali.

The prohibitory Order at p.5 was served on the Officer commanding the workshop directing him to withhold payment of Rs.57/2/6 to the defendant, out of the amount of bonus payable to the defendant. The Order purported to be in force upto 5-6-1946. After the expiry of the life of the Pro-order the bonus was paid in full but the military authorities to the defendant on 13-8-1946.

The plaintiff then made the application to the Court at p.13 on 16-11-1946 and the Manager of the workshop was called upon by the Court to show cause against the allegations made by the plaintiff that the bonus was paid in contravention of the prohibitory order of the Court.

The Commander, Bombay Area requested the H.L.A. to advise whether the bonus money of civilian Govt. employees can be attached and to arrange for the postponement of the hearing of the plaintiff's application at p.13.It appears from the report of the D.G.P. Nasik dated 21-12-1946 at p.23 who was asked to obtain postponement that the applicant remained absent on 18-12-1946 the date fixed for hearing and that his application was therefore rejected for want of prosecution . The D.G.P. has already forwarded a copy of his report to the Commander, Bombay Area. No further action therefore appears necessary. The question of attachment of the bonus raised by the Commandant is now of academic interest and can be considered if further reference is received from the Commandant. If approved the papers may be filed for the present.

Id/-
dt/-13/1/

S.A.S. I think in view of ~~xxx~~ para 4 of the letter at pi ~~xxx~~ we should reply on the point raised at this case although at S.2 accedenniain Court . If A.L.R. agrees .Office may be asked to consider the points.

Id/-P.M.L.
dt/- 13/1/

A.L.R.

yes

R.T.K. 14p.

V.VK. 15/5/1956/

SC.

Submitted with reference to S.A.S.'s note overleaf:-

2. The question raised for the consideration of the R.L.A. by the Commandant, Bombay Area, in para.4 of his letter dated 21-11-46 at p. 1 is whether the bonus money payable by the Military authorities to its Civilian employees is liable to attachment in executione of a decree by a Court.

3. Under s.60(1) of the Code of Civil Procedure, 1908 (V of 1908) money belonging to the judgment-debtor ; or over which he has a disposing power, whether the same he held in the name of the judgment-debtor or by another person in trust for him or on his behalf is liable to attachment inexcution of decrees .

4. It is stated in the letter of O.C. Ind Station Workshops, I.E.M.E. addressed to the Court dated 5-4-1946 that the bonus sanctioned in this case was more or less a gift. A gift must be completed either by registered document or by actual payment as required by section 123 of the Transfer of Property Act, 1882. Before the amount is paid to the judgment-debtor it cannot be attached in the hands of the auditors by any creditor, as unless the gift is complete the jedgment-debtor has no disposing power over it within the meaning of section 60(1) of theCode of Civil Procedure, 1908 (Jankidas Vs. East Indian Rly.Co. (1884)6All.634 and Natha Vs. Schaller(1923) 25 Bom. L.R. 599).

5. If approved the Commandant may be informed as in para 4 above.

Id/-P.M.L.
15/5/56/

S.A.S.

I agree. A bonus sanctioned by an employer to his servant is virtually a gift which must be completed either by action by a registered document or by actual payment as resumed by section 123 of the Transfer of property Act, unless the gift is completed in this manner , the servant has no dispaching power over th e amount and it cannot be attached/see the hands of the employer by the creditors of the servant. Mulla Civil Pro. Code p. 240).

Id/-P.M.L.
dt/-17/1/47/

A.L.R.
R.L.A.

V.VR. 15/5/56/ . SC.

Reply may be :-

In Janki Das v. East India Ry. (All 634) a railway company sanctioned a bonus to A, and the amount was forwarded to the District Pay Master of the Company for payment to A. It was held that a bonus sanctioned by a Railway Company to its servnats is virtually a gift which must be completed either by a registered document or by actual payment as required by section 123 of the Transfer of Property Act and consequently before the amount was paid to A it could not be attached, for the gift was not complete and A had therefore no disposing power over the money under section 60 of the Civil Procedure Code of 1908 Code. That decision of the Allahabad High Court was followed by the Bombay High Court in Natha Gulab and Co. v. Shaker and G.I.P. Railway,(25 B.L.R. 599). The same principle will apply to the bonus granted to the civilian Govt. employees.

In the present case it appears from the report of the D.C.P. Nasik that the application has been rejected for want of prosecution.

Id/-R.T.K.
dt/-20/1/

R.L.A.

Sd/-D.V.W.
dt/-1/1.

V.VK. 18/5/56/

SC.

No.985
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 28th January 1947.

From

D.V.Vyas,Esquire, I.C.S.
Remembrancer of Legal Affairs.

To

The Commandant,
HQ,Bombay Area,
Colaba, Bombay 5.

Subject:- Discipline: Money Lenders Claim from Government Employees.

Sir,

With reference to your letter No.318/4/A, dated 21st November 1946, I have the honour to state that in Janki Das V. East India Railway (6 All 634) a Railway Company sanctioned a bonus to A, and the amount was forwarded to the District Pay Master of the Company for payment to A. It was held that a bonus sanctioned by a Railway Company to its servants is virtually a gift which must be completed either by a registered document or by actual payment as required by section 123 of the Transfer of Property Act,1882 and consequently before the amount was paid to A it could not be attached, for the gift was not complete and A had therefore no disposing power over the money under section 60 of the Code of Civil Procedure, 1908 , That decision of the Allahabad High Court was followed by the Bombay High Court in Natha Gulab and Co. V. Schaller and G.I.P. Railway, (25 B.L.R. 595). The same principle will apply to the bonus granted to the civilian Government employees.

In the present case it appears from the report of the District Government Pleader, Nasik that the aplication has been rejected for want of prosecution .

I have the honour to be
Sir,

Your obedient servant,

O.C. Id/-D.V.V.
Remembrancer of Legal Affairs.

Issued
Id/- D.V.V.
dt/- 28/1.

V.VK. 15/5/1956/ 5C.

Office of the R.L.A.

The last returnable date was 13th November 1946. If the commission has not yet been executed, the High Court at Nova Goa may again be requested to extend the time for return of the commission, and the Prothonotary may be requested to expedite the execution .

Id/- P.M.M.
O.C. dt/-3/5/1947/

Remembrancer of Legal Affairs.

U.O. to P. & S.D. ,No. 4596 ,dated the 5th May 1947.

V.VK. 15/5/56/

SC.

Office of the R.L.A.

The Prince of Berar does not appear to be either a Sovereign ~~ex~~ Prince or a Ruling Chief within the meaning of section 86 of the Civil Procedure Code. The view taken by the Political and Services Department is correct .

O.C. Sd/- D.V.N.

Remembrancer of Legal Affairs.

U.O.R. to P.& S.D. No. 2086 , dated the 1st March 1947.

V.V.K. 15/5/1956/

SC.

Legal Department.

R.I.No. 4648, dated 30th April 1947.

Submitted:

2. The President, Group Congress Committee of Uppin-Betgeri made a complaint to Government that as Basaya Padaya has neglected the due performance of the Devasthan service and has not repaired the temple building, some six persons who came forward as panchas of the village have appointed Mr. Shivarudrayya Kallaya as pujari of Kalmeshwar Dev and Someshwar Dev at Betgeri, in place of Basaya, who is the recognised holder of the Devasthan allowance of Rs. 30/- (Rs 15/- in respect of Kalmeshwar Dev and Rs. 15/-of Someshwar Dev) and a joint holder of Devasthan land S.No. 87 assigned to Kalmeshwar Dev. The village panchas now request that the Devasthan land should exclusively be entered along with the Devasthan allowance in the name of Shivarudrayya Kallaya. It appears that Basaya is unwilling to have this arrangement made by the panch. The District Deputy Collector, Dharwar, states that the cash allowance and the land may be entered in the name of the panchas. The Collector of Dharwar is of the view that it is not possible to enter the Devasthan land and allowance in the name of the panchas and the best course would be to bring a suit against Basaya under section 92 of the Civil Procedure Code.

V.VK. 15/5/1956/

5C.

Office of the R.L.A.

Seen and returned.

2. The view taken by the Collector of Dharwar in paragraph 4 of his letter, dated the 21st February 1947, at page 1 ante is correct.

O.C. Id/- D.V.J.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 6632 dated the 27th June 1947.

V.VK. 15/8/56/
SC.

Office of the R.L.A.

Under section 29 of the Code of Civil Procedure, 1908, summonses and other processes issued by any Civil or Revenue Court situate beyond the limits of the British India may be sent to the Courts in British India and served as if they were summonses issued by such courts: Provided that (i) the Courts issuing such summonses or processes have been established or continued by the authority of the Central Government or of the Crown Representative, or (ii) that the Provincial Government or the Province in which such summonses or processes are to be served has by notification in ~~which~~ the Official Gazette declared the provisions of this section to apply to such Courts .

Paragraph 16(ii) of Chapter I-A of the Civil Manual issued by the High Court , Bombay , Volume I (vide p.54) provides that the right to send summonses direct to a British Indian Court for service exists only if the issuing Court is either (a) established or continued by the authority of the Governor General in Council or (b) notified for this purpose in the Gazette of India. The Courts to which theprovisions of section 29 of the Code have been declared by notification to be applicable are specified in items I to XIII of para. 16 (iii) of Chapter I-A . The Civil Courts of France, Spain, Belgium, Russia, Portugal, Egypt, Japan, Sweden , are mentioned ,but there appears no mention about Civil Courts of South Africa. The presumption is that the provisions of section 29 of the Code of Civil Procedure are not applied to the Courts of South Africa . Consequently, there appears no objection to the course proposed in paragraph 5 of the Home Department office note.

S.C. Id/- D.V.W.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 7684 dated the 25th July 1947.

V.VK. 15/8/46/

50.

Office of the R.L.A.

Where an appeal against acquittal is admitted by the High Court , the accused notwith-standing his acquittal by the lower Court, would be deemed to be under trial until the appeal is disposed of (see section 427 Cr. P.C.).

O.C. Id/- C.V.W.
Remembrancer of Legal Affairs.

U.R. to P.& S.P. No. 2063 , dated the 5th August 1947.

V.VK. 15/8/58/ 50.

Submitted.

2. Attention is invited to the letter of the Collr. of Ahmednagar on p. 1 ante. For reasons stated therein the Collr. requests Government's sanction under section 93 C.P. Code to his filing a friendly suit against the two surviving exnutors Mr. P.A. Deochake and the President Borough Municipality Manager for taking over the possession by the Ahmednagar Borough Municipality of the assets and the property of the Trust fund of the late Mr. Balasaheb Babaji Deshapande of Ahmednagar.

The Comm. C.D. recomends that sanction may be accorded to the institution of the suit and to the exercise by the Collr. of the powers of the Advocate General under section 92 of the C.P. Code.

The R.D. has accepted the proposal of the Collr. of Ahmednagar and has sent the draft G.R. at p. 4 for R.L.A.'s scrutiny.

The draft G.R. at p.4 ante, as amended is in order.

Sd/- T.N.Chaudhari
dt/- 19/11/

A.S. ID/- B.M.C.
dt/- 20/11/47/

A.L.R. Id/-R.T.K.
dt/- 20/11/

R.L.A. Id/-P.M.L.
dt/-20/4/

U.O.R. to R.D. No. 11156 of dt - 21.11.47.

V.VK. 15/5/56/

56.